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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

YUGEN KAISHA, Y.K.F.,

Plaintiff,

v.

STEPHANIE DODSON,

Defendant.

Case No.: C-08-225-SC

**COMPLAINT FOR
DECLARATORY RELIEF IN
INTERVENTION BY MARTIN F.
TRIANO DBA LAW OFFICES OF
MARTIN F. TRIANO**

COMES NOW PLAINTIFF MARTIN F. TRIANO (hereinafter "LOMT") who alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. The instant action was brought pursuant to Rule 7001, et seq. of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §§ 544(b)(1), 548 and 550.
3. The action was referred from the Bankruptcy Court by Hon. Thomas Carlson to this Court on January 7, 2008 pursuant to Local Rule 9015-2.
4. This intervention is brought pursuant to Rule 7024 of the Federal Rules of Bankruptcy Procedure, as well as Rule 24 of the Federal Rules of Civil Procedure.

1 5. Venue in this Court is proper pursuant to 28 U.S.C. § 1409 as this intervention is for
2 the adversary proceeding that arises under and in connection with the above-captioned case under
3 11 U.S.C. § 101, et seq (the “Bankruptcy Code”), which is pending in this District.

4 6. The adversary proceeding, under which this intervention arises, is a core proceeding as
5 defined by 28 U.S.C. § 157(b)(2)(H).

6 **PARTIES AND BACKGROUND FACTS**

7 7. On September 6, 2005 (the “Petition Date”) Alexander N. Popov (“Debtor”) filed a
8 voluntary petition for relief under Chapter 7 of the Bankruptcy Code, commencing the above-
9 captioned bankruptcy (the “Bankruptcy Action”).

10 8. Thereafter, E. Lynn Schoenmann (“Trustee”) became the duly appointed Chapter 7
11 Trustee to administer the Debtor’s bankruptcy estate (the “Estate”).

12 9. On or about August 1, 2007, Yugen Kaisha, Y.K.F. (“YKF”) purchased from the
13 Trustee the right to bring the instant adversary proceeding pursuant to the Assignment Agreement
14 and Order entered in the Bankruptcy Action on July 31, 2007.

15 10. Prior to filing the Bankruptcy Action, Debtor was the owner of record for 3,744,000
16 shares of common stock (the “Shares”) of Smart Alec’s Intelligent Food, Inc., a California
17 corporation (“Smart Alec’s”).

18 11. Martin F. Triano dba Law Offices of Martin F. Triano (hereinafter “LOMT”) is, and
19 at all times mentioned herein was, a law firm with its principal place of business located in the
20 City and County of San Francisco.

21 12. LOMT began representing Debtor in October of 2001 in the case of Popov v.
22 Hayashi. Debtor hired LOMT for his case against Hayashi to recover Barry Bonds’ 73rd homerun
23 baseball. Thereafter LOMT represented POPOV in the cases of Bantry Bay v. Popov and Yugen
24 Kaisha (YKF) v. Popov.

25 13. LOMT is informed and believes and thereon alleges that Debtor was, until April of
26 2004, the majority shareholder in Smart Alec’s and until February of 2004, the acting president
27 of Smart Alec’s.

28 14. On April 17, 2002, Debtor granted to LOMT a Promissory Note (“Note”) for the

1 \$45,648 owed by Debtor to LOMT together with “such additional sums which may accrue from
2 legal services being provided” by LOMT. Debtor secured his promissory note by pledging his
3 3,744,000 Shares of stock in SMART ALEC’s as collateral. See Exhibit A. The Note contains a
4 provision for the payment of attorney fees and costs incurred in the enforcement in the Note.

5 15. On April 17, 2002, same day Debtor, as acting president of Smart Alec’s, also signed
6 and executed a written Guarantee of Promissory Note by Smart Alec’s for the full performance of
7 Debtor under the provisions of the Note (“Guarantee”). See Exhibit A.

8 16. On May 10, 2002 LOMT executed a UCC-1 filing statement with the California
9 Secretary of State. On April 20, 2007, the UCC-1 filing statement was amended and is due to
10 lapse on May 10, 2012. A true and correct copy of the amended UCC-1 filing statement is
11 attached hereto as Exhibit B.

12 17. LOMT represented Debtor until Debtor discharged LOMT on May 14, 2003.

13 18. LOMT is informed and believes and thereon alleges that defendant Stephanie
14 Dodson, an individual (the “Defendant”), is the spouse of Debtor.

15 19. On or about January 27, 2003, LOMT faxed and mailed copies of the Note and
16 Guarantee to Defendant.

17 20. LOMT is informed and believes and thereon alleges that Debtor transferred all right,
18 title and interest in the Shares to Defendant pursuant to the Share Purchase Agreement dated
19 April 18, 2004 for the sum of \$12,500 (the “Transfer”), which transfer was in violation of the
20 Note’s terms and constituted a default of the Note. See Exhibit C. LOMT did not have notice of
21 the Transfer until in or about October, 2005.

22 21. LOMT is informed and believes and thereon alleges that Defendant is Smart Alec’s
23 president, and as a result of the Transfer, is Smart Alec’s sole stockholder.

24 22. On September 6, 2005 Debtor filed a voluntary petition for relief under Chapter 7 of
25 the Bankruptcy Code (“Bankruptcy Action”). Debtor was granted a discharge on April 9, 2006.
26 Despite the Bankruptcy Court grant of discharge, LOMT continues to possess a secured interest
27 in the Shares now owned by Defendant.

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1 23. LOMT has not received full payment on the amount set forth in the Note and secured
2 by the Shares. By the terms of the promissory note, the entire balance, including principal, costs,
3 and interest, was due on April 30, 2003.

4 24. LOMT timely presented a proof of claim in the Bankruptcy Action for its interest in
5 the Shares ("Proof of Claim"), which claim was not objected to by any creditors and was upheld
6 by this court and the district court upon objection and appeal by the Trustee.

7 25. LOMT is informed and believes and thereon alleges that Defendant obtained a loan
8 to pay off the debt owed by Smart Alec's to YKF, which was incurred pursuant to a settlement
9 agreement entered into between Debtor and YKF on or about February 6, 2004. LOMT is
10 informed and believes and thereon alleges that as a result of Defendant's actions, LOMT's lien
11 against the stock has been subordinated.

12 26. In April 1, 2007 the balance owed to LOMT for legal services rendered, costs, and
13 interest accrued as a result of LOMT's representation of Debtor is \$696,629.63. The balance
14 owed to LOMT continues to accrue interest at a rate of 10% per year. LOMT was paid
15 \$238,192.75 from the sale of the Debtor's share of the proceeds of the Barry Bonds' 73rd
16 homerun on January 23, 2008 by the Trustee of Debtor's estate.

17 27. LOMT filed an action in state court on July 13, 2007 for against Smart Alec's and
18 Defendant for determination of LOMT's rights pursuant to the Note, which is currently pending
19 before the San Francisco Superior Court and remains in the initial stage of proceedings.

20 28. On or about September 5, 2007, YKF filed the instant action alleging that Debtor and
21 Defendant backdated the Share Purchase Agreement for the Transfer of the Shares and it from
22 August, 2005 to April 18, 2004 with the actual intent to hinder and defraud Debtor's creditors by
23 wrongfully removing the Shares as an asset of the Debtor's Estate shortly before the Petition
24 Date in order to retain control of Smart Alec's.

25 **FIRST CAUSE OF ACTION**

26 **(Declaratory Relief as to DODSON and YKF)**

27 29. LOMT re-alleges and incorporates herein paragraphs 1 to 27 as set forth above.

28 30. LOMT holds a Note that provides for its secured interest in the Shares and this

1 interest was perfected by LOMT. The Note provides for the collection of attorneys fees and costs
2 incurred to enforce the Note.

3 31. LOMT is informed and believes and on that basis alleges that Defendant is not a
4 protected purchaser because she had notice of the terms of the Note and of LOMT's security
5 interest in the Shares, and she did not receive the Transfer in good faith and did not pay
6 reasonably equivalent value for the Transfer.

7 32. LOMT is informed and believes and on that basis alleges that pursuant to California
8 Commercial Code Sections 9312(a) and 9315(a), LOMT holds a valid and perfected security
9 interest in the Shares, and in any proceeds from the Shares.

10 33. On or about February 22, 2007, during a deposition held at the Law Offices of Martin
11 F. Triano, Defendant testified that she did not believe that LOMT had a lien against the Shares
12 that she purchased from Debtor. She testified that she believes the lien is invalid due to
13 statements made to her by Debtor as well as statements made by the attorneys for YKF during
14 settlement negotiations. LOMT is informed and believes and thereon alleges that Defendant
15 continues to maintain that LOMT does not hold a valid lien against the Shares she purchased
16 from Debtor.

17 34. An actual and present controversy exists between LOMT and Defendant concerning
18 their respective rights and duties in regard to the Note that granted LOMT a security interest in
19 the Shares on or about April 17, 2002.

20 35. LOMT is a secured creditor of Debtor's estate pursuant to LOMT's Proof of Claim.
21 YKF purchased its right to bring the Adversary Proceeding subject to the interest of secured
22 creditors of Debtor's estate.

23 36. YKF has not sought recovery in this Adversary Proceeding for the secured creditors
24 of Debtor's estate. YKF has only requested that the court award relief to YKF personally.

25 37. An actual and present controversy exists between LOMT and YKF concerning their
26 respective rights and duties in regard to the right to recover from Debtor's estate, pursuant to
27 YKF's purchase of the right to bring this Adversary Proceeding and LOMT's Proof of Claim in
28 the Bankruptcy Action.

1 38. LOMT desires a judicial determination, as to respective rights and duties of LOMT,
2 YKF and Defendant, such that:

- 3 (a) LOMT possesses a valid security interest on the Shares of stock formerly held
4 by Debtor and now held by Defendant;
- 5 (b) LOMT possesses a valid security interest in the proceeds from the Shares
6 formerly held by Debtor and now held by Defendant;
- 7 (c) Should YKF recover the Shares pursuant to this action, LOMT possesses a
8 valid security interest in the Shares which will continue upon any transfer of
9 such Shares to YKF;
- 10 (d) Any recovery by YKF in this action represents proceeds of the Shares;
- 11 (e) LOMT possesses a valid security interest in any proceeds from the Shares that
12 may be recovered by YKF;
- 13 (f) Should YKF recover in this action, the proceeds therefrom should be paid
14 directly to LOMT in an amount according to proof as proceeds from the
15 Shares pursuant to LOMT's secured interest in the Shares;
- 16 (g) Attorneys fees and costs incurred herein are collectable under the Note;
- 17 (h) LOMT holds a valid proof of claim in the Debtor's estate; and
- 18 (i) LOMT is entitled to recover in this Adversary Proceeding based upon
19 LOMT's Proof of Claim in an amount according to proof.

20 WHEREFORE, Plaintiff LOMT prays for judgment against Defendant as follows:

21 1. A judicial determination that:

- 22 (a) LOMT possesses a valid security interest on the Shares of stock formerly held
23 by Debtor and now held by Defendant;
- 24 (b) LOMT possesses a valid security interest in the proceeds from the Shares
25 formerly held by Debtor and now held by Defendant;
- 26 (c) LOMT is entitled to recover in this Adversary Proceeding in an amount
27 according to proof based upon the secured interest in any proceeds from the
28 Shares pursuant to the Promissory Note LOMT holds;

1 (d) Any recovery by YKF in this action as represents proceeds of the Shares and
2 should be paid directly to LOMT in an amount according to proof, pursuant to
3 the Promissory Note LOMT holds;

4 (e) Attorneys fees and costs incurred herein are collectable under the Note;

5 (f) LOMT holds a valid proof of claim in the Debtor's estate; and

6 (g) LOMT is entitled to recover in this Adversary Proceeding based upon
7 LOMT's Proof of Claim in an amount according to proof.

8 1. For the payment of amounts recovered by YKF in this action to LOMT pursuant to
9 LOMT's Note and Proof of Claim subject in an amount subject to proof;

10 2. For attorneys fees and costs of suit incurred herein in an amount subject to proof; and

11 3. For such other and further relief as the court may deem just and proper.

12 Dated: August 12, 2008

LAW OFFICES OF TRIANO & BYRNE

13
14 By: /s/ Mark D. Byrne

15 MARK D. BYRNE

16 Attorney for Martin F. Triano

17 dba Law Office of Martin F. Triano
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UNITED STATES DISTRICT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No.: C-08-225-SC

YUGEN KAISHA, Y.K.F.

Plaintiff

vs.

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Defendant.

CERTIFICATE OF SERVICE

I am citizen of the United States, and a resident of the County of San Francisco; I am over the age of eighteen years, and not a party to the within action. My business address is 25 Jessie Street, 16th Floor, San Francisco, California 94105-2749. On August 12, 2008 I served the following documents:

- COMPLAINT FOR DECLARATORY RELIEF IN THE INTERVENTION BY MARTIN F. TRIANO DBA LAW OFFICES OF MARTIN F. TRIANO***

On the parties listed, addressed as follows:

1 JOEL BELWAY, ESQ.
2 235 MONTGOMERY STREET, SUITE 668
3 SAN FRANCISCO, CA 94104-2910

JAMES S. MONROE, ESQ.
NIXON PEABODY LLP,
ONE EMBARCADERO CENTER, 18TH
FLOOR
SAN FRANCISCO, CA 94111

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5 **First Class Mail:** I am "readily familiar" with the firm's practice of collection and
6 **XXX** processing correspondence for mailing. Under that practice it would be deposited with
7 the U.S. postal service to **JOEL BELWAY, ESQ.** and **JAMES S. MONROE, ESQ.**
8 the same day with postage thereon fully prepaid at San Francisco, California in the
9 ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more one day after
date of deposit for mailing an affidavit.

10 **Facsimile:** By transmitting a true and correct copy via facsimile electronic equipment
11 transmission (fax) to (List names) at the fax number listed above.

12 **Overnight:** By placing the document(s) thereof into envelope(s) bearing the name(s)
and address(es) of the person(s) to be served by Federal Express Delivery.

13 **STATE:** I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct.

15 **XXX FEDERAL:** I declare that I am employed in the office of a member of the bar of this
16 Court at whose direction the service was made. I declare under penalty of perjury under
the laws of the United States of America that the foregoing is true and correct.

17 I declare under penalty of perjury under the laws of the United States of America, that the
18 foregoing is true and correct. Executed on August 12, 2008 in San Francisco, California.

19 Respectfully Submitted,

20 Stacey Arriola
21 Law Offices of Triano & Byrne
22 25 Jessie Street, 16th Floor
San Francisco, CA 94105

23 Dated: August 12, 2008

24 /s/ Stacey Arriola

25 Stacey Arriola
26 Legal Assistant
27
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